

## Message Text

UNCLASSIFIED

PAGE 01 USBERL 01756 011609Z  
ACTION SCS-05

INFO OCT-01 EUR-12 ISO-00 L-03 /021 W  
-----025902 012348Z /65

R 011055Z JUL 77  
FM USMISSION USBERLIN  
TO SECSTATE WASHDC 4854  
INFO AMEMBASSY BONN  
AMCONSUL HAMBURG  
AMCONSUL BREMEN  
AMCONSUL DUESSELDORF  
AMCONSUL FRANKFURT  
AMCONSUL STUTTGART  
AMCONSUL MUNICH

UNCLAS USBERLIN 1756

E O 11652: NA  
TAGS: CARR  
SUBJ: LEGAL REPRESENTATION OF AMERICANS ARRESTED ABROAD

REF: STATE 147704; BONN 10680

1. BASED ON OUR EXPERIENCE HERE, MISSION WOULD LIKE TO  
MODIFY ONE ASPECT OF BONN'S RESPONSE TO DEPARTMENT'S  
INQUIRY CONCERNING LEGAL REPRESENTATION FOR AMERICANS  
ARRESTED ABROAD. WHILE IT IS TRUE THAT GERMAN LAWS AND  
REGULATIONS MAKE PROVISION FOR LEGAL COUNSEL OF THE  
"PUBLIC DEFENDER" TYPE, THIS PROVISION IS NOT AN  
ACROSS-THE-BOARD ONE, BUT RATHER ONE LIMITED TO  
CERTAIN CLEARLY DEFINED SITUATIONS OR CONDITIONS. FOR  
EXAMPLE, DEFENSE COUNSEL MUST BE PROVIDED IF THE ACCUSED  
IS CHARGED WITH A CAPITAL CRIME, SUCH AS MURDER OR ARMED  
ROBBERY; IF THE TRIAL ORIGINATES IN A HIGHER, AS OPPOSED  
TO A LOWER, COURT; OR IF THE ACCUSED HAS SPENT MORE THAN  
THREE MONTHS IN PRE-TRIAL DETENTION. IF NEITHER THESE  
NOR ANY OF THE OTHER PRESCRIBED CONDITIONS ARE PRESENT  
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 USBERL 01756 011609Z

IN A GIVEN CASE THE QUESTION OF WHETHER OR NOT A PUBLIC  
DEFENDER IS PROVIDED LIES COMPLETELY WITHIN THE  
DISCRETION OF THE JUDGE. IN SOME SITUATIONS, THEREFORE,  
IT IS ENTIRELY POSSIBLE THAT AMERICAN CITIZENS WHO ARE UNABLE  
TO AFFORD A LAWYER CAN BE TRIED AND CONVICTED WITHOUT HAVING  
BEEN PROPERLY REPRESENTED IN COURT.

2. AS A CASE IN POINT, MISSION WOULD LIKE TO CITE ONE RECENT TRIAL HERE. DEFENDENT WAS ACCUSED OF TRYING TO STRANGLE HIS GIRL FRIEND DURING A LOVERS' QUARREL; CHARGE WAS ORIGINALLY ATTEMPTED MANSLAUGHTER, WHICH WOULD HAVE REQUIRED PUBLIC DEFENDER, BUT WAS REDUCED TO BODILY ASSAULT. DEFENDENT SPOKE NO GERMAN AND HAD NO FUNDS FOR PRIVATE COUNSEL. TRIAL OCCURED IN DISTRICT COURT ROUGHLY TWO AND ONE-HALF MONTHS AFTER DEFENDENT HAD BEEN ARRESTED. NONE OF THE PRESCRIBED CONDITIONS FOR AUTOMATIC PROVISION OF DEFENSE COUNSEL WERE PRESENT. CONOFF NEVERTHELESS FELT THAT CHARGE WAS SERIOUS ENOUGH TO WARRANT APPOINTMENT OF PUBLIC DEFENDER AND REQUESTED JUDGE TO DO SO. JUDGE REFUSED. DEFENDENT WAS SENTENCED TO 15 MONTHS IMPRISONMENT. FACTS WERE SUCH THAT EVEN A HIGHLY SKILLED LAWYER MIGHT NOT HAVE GOTTEN DEFENDENT ACQUITTED BUT, BY STRESSING EXTENUATING CIRCUMSTANCES, PROBABLY COULD HAVE PROCURED A LIGHTER SENTENCE. IN ANY EVENT, THIS EXPERIENCE CLEARLY ILLUSTRATES THAT PUBLIC DEFENDERS ARE NOT AUTOMATICALLY AVAILABLE IN EACH AND EVERY CASE. GEORGE

UNCLASSIFIED

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Sent Date:** 01-Jul-1977 12:00:00 am  
**Decaption Date:** 01-Jan-1960 12:00:00 am  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01-Jan-1960 12:00:00 am  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1977USBERL01756  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Expiration:**  
**Film Number:** D770236-0285  
**Format:** TEL  
**From:** USBERLIN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1977/newtext/t19770796/aaaadfli.tel  
**Line Count:** 81  
**Litigation Code IDs:**  
**Litigation Codes:**  
**Litigation History:**  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Message ID:** 87e1f071-c288-dd11-92da-001cc4696bcc  
**Office:** ACTION SCS  
**Original Classification:** UNCLASSIFIED  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 2  
**Previous Channel Indicators:** n/a  
**Previous Classification:** n/a  
**Previous Handling Restrictions:** n/a  
**Reference:** 77 STATE 147704, 77 BONN 10680  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 18-Oct-2004 12:00:00 am  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**SAS ID:** 1978335  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** LEGAL REPRESENTATION OF AMERICANS ARRESTED ABROAD  
**TAGS:** CARR  
**To:** STATE  
**Type:** TE  
**vdkgvwkey:** odbc://SAS/SAS.dbo.SAS\_Docs/87e1f071-c288-dd11-92da-001cc4696bcc  
**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009